IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 4TH OCTOBER 2006 / 12TH ASWINA 1928

Crl.MC.No. 1204 of 2004(A)

CC.390/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR

.....

PETITIONER/1ST ACCUSED:

KINAKOOL THAVOOR SIYAD,
S/O. C.V.N. MEMY, SIDHIK NAGAR,
IRIKOOR VILLAGE.

BY ADV. SRI.BLAZE K. JOSE

RESPONDENTS/STATE & COMPLAINANT:
---

1. THE STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA
REPRESENTING THE SUB INSPECTOR OF POLICE,
IRIKOOR POLICE STATION.

2. PUTHISERI KUNJURAMAN NAMBIAR
S/O. KUNJAPPA NAMBIAR, KALLAYAD AMSOM,
BLATHUR DESOM, THALIPARAMBA.

R1PUBLIC PROSECUTOR ADV. SHRI GIKKU JACOB.
R2 BY ADV. SRI.P.K. BABU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 04/10/2006, ALONG WITH CRL. MC NO. 1689 OF 2004 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL. M.APPLN. NO. 5393 OF 2004 IN CRL.M.C. 1204 OF 2004

DISPOSED OF VIDE ORDER IN CRL. M.C.

04.10.2006 SD/- K.T. SANKARAN, JUDGE.

/true copy/

P.A. TO JUDGE

K.T. SANKARAN, J.

.....

CRL. M.C. Nos. 1204 & 1689 OF 2004

.....

Dated this the 4th October, 2006

O R D E R

Crl. M.C. 1204 of 2004 is filed by the first accused and Crl.M.C. 1689 of 2004 is filed by the second accused in C.C.No. 390 of 2003 on the file of the court of the Judicial Magistrate of the First Class-II, Kannur. The prayer in the Crl.M.Cs. is to quash the complaint, which is marked as Annexure III in Crl.M.C.No.1689 of 2004 and Annexure IV in Crl.M.C.No. 1204 of 2004. The offences alleged against the accused persons are under sections 447 and 379 read with section 34 of the Indian Penal Code.

2. It is stated in the complaint that the complainant is the owner, in possession of an extent of 1 acre 55 cents in R.S.No.6 of Kalliad village. He claims title to the property as per an oral lease granted by one Parukutty Amma . It is stated that the complainant obtained purchase certificate from the Land Tribunal. On 20.09.2000, eight trees were cut by the complainant from the property in question. The logs were cut into 21 pieces and were stacked in the property. The complainant decided to sell the logs to one Abdul Gafoor for a consideration of Rs. 4,000/- and a sum

of Rs.1,000/- was received as advance. Abdul Gafoor had put his initials 'K.T' on the logs. It is alleged that on 02.10.2000, the accused persons and three persons, who could be identified, removed the logs in a lorry bearing registration No. KL.7/9487. A petition was submitted by the complainant before the Irikkoor police station. The police accompanied the complainant and it was found that the logs were kept in the stone crusher unit belonging to the first accused. Later, it is alleged that, the police did not properly investigate the case. The complainant submitted representations before the C.I. of Police and Dy.S.P. complaining inaction of the S.I. of Police. The S.I. was directed to conduct an investigation. On 26.10.2000, the complainant approached the S.I. of Police and on that day, Crime No. 212/2000 was registered against the accused persons under section 379 read with 34 I.P.C. The police found out the logs. The agents of the first accused brought back the timber to the property of the complainant. Later the police referred the case and submitted a refer report before the court, stating that the matter involves a civil dispute. The complainant states that the accused committed offence under sections 447 and 379 read with 34 of the I.P.C.

3. The contention put forward by the accused persons in the Crl.M.C. is that the complaint amounts to an abuse of the process of the court. It is also their contention that, even if all the averments and allegations made in the complaint are taken as true, no offence is made out against them. It is also submitted that to secure the ends of justice, it is just and proper to quash the proceedings in C.C.No. 390 of 2003 . It is contended by the petitioners that there was a civil dispute between Parukutty Amma, the owner of the property in question and the defacto complainant, in O.S.No. 136 of 1990 of the Munsiff's Court, Taliparamba. That was a suit filed by Parukutty Amma against the defacto complainant and another, for recovery of possession and injunction. The suit was decreed as per judgment and decree dated 21.06.1991. The contention put forward by the defacto complainant that he had obtained oral lease from Parukutty Amma was found against. The civil court found that the application submitted by the defacto complainant before the Land Tribunal was dismissed and the said decision was confirmed in appeal and revision. The defacto complainant filed A.S.No. 130 of 1991 before the Sub Court, Payyannur, challenging the judgment and decree in O.S.No.

136 of 1990. The appellate court dismissed the appeal as per the judgment and decree dated 30.06.1995. It is submitted that the defacto complainant has filed S.A.No. 885 of 1995 before this Court and Second Appeal is pending.

4. Section 378 of I.P.C. defines the 'theft' as follows:

> *"Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft."*

Section 24 of I.P.C. defines 'dishonestly' as thus:

> *"Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".*

Section 23 of I.P.C. defines 'wrongful gain' and 'wrongful loss'.

> *" 'Wrongful gain' is gain by unlawful means of property to which the person gaining is not legally entitled."*
> *"Wrongful loss' is the loss by unlawful means of property to which the person losing it is legally entitled.*

In the case on hand, it cannot be said that the defacto complainant has sustained any wrongful loss. It was found by the civil court that the defacto complaiant/the first defendant has no title as claimed by him and

that Parukutty Amma is the owner of the property and she is entitled to get recovery of possession from the defacto complainant. It is contended by the petitioner that during the investigation by the police, the son of Parukutty Amma stated before the police that the logs were removed as per his instruction. The statement given by the son of Parukutty Amma was relied on by the police and the case was referred. Since there is a bonafide civil dispute, it cannot be said that the proceeding initiated as per the complaint was a bonafide action on the part of the complainant since the complainant knew well that the dispute is pending before this Court in Second Appeal. He also knew well that the civil court has decided the case against him. It was found by the civil court that the plaintiff in the suit has title to the property. Therefore the accused persons are right in contending that the complaint amounts to an abuse of process of the court. The dispute being purely a civil dispute and since the matter is now pending in Second Appeal., it cannot be said that ingredients of section 378 are made out, particularly, when the son of the plaintiff in the suit stated before the police that the logs were removed as per his instruction. There was no wrongful loss to the complainant and since there is no

wrongful loss, there is no wrongful gain, particularly when the accused have removed the timber, on instruction from the son of the owner of the property.

In the facts and circumstances of the case and in the light of the materials produced before me, I am of the view that the complaint is liable to be quashed . Accordingly, all proceedings in C.C.No. 390 of 2003 on the file of the Judicial Magistrate of the First Class-II, Kannur are quashed. Crl.M.Cs are allowed.

K.T. SANKARAN,
JUDGE.

lk

K.T. SANKARAN, J.

.....

CRL. M.C.Nos. 1204 & 1689 OF 2004

.....

Dated this the 4th October, 2006

O R D E R